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Attorneys for Defendant Best Buy Stores, L.P.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION**

CHARLES DEWITT,

Plaintiff,

v.

BEST BUY STORES, L.P. d/b/a BEST
BUY: RFA Brands, LLC, d/b/a RFA
Brands and DOES AND ROES 1
through 10,

Defendant.

Cause No. _____

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. § 1332, 1441 and 1446, Defendant Best Buy Stores, L.P. (“Best Buy”), appearing specially so as to preserve any and all defenses available under Rule 12 of the Federal Rules of Civil Procedure, hereby gives notice of the removal of this action from Montana’s First Judicial District Court, Lewis and Clark County to the United States District Court for the District of

Montana, Helena Division. In support of this Notice of Removal, Best Buy hereby shows this Court:

INTRODUCTION

1. Removing party Best Buy is a Defendant in the above-entitled action filed in Montana’s First Judicial District Court, Lewis and Clark County, Cause No. DV-22-495

2. On June 21, 2022, the above-entitled action was commenced by Plaintiff Charles DeWitt against Best Buy and Defendant RFA Brands, LLC in Montana’s First Judicial District Court, Lewis and Clark County, and the claim is currently pending there.

3. In his Complaint, Plaintiff alleges he purchased a battery charger manufactured by Defendant RFA Brands, LLC, at Best Buy. *See* Ex. A, Complaint, ¶¶ 9-11.

4. Plaintiff alleges the charger caught fire in his bedroom and that he has suffered bodily injury, emotional distress, and property damages as a result. *Id.*, ¶¶ 16-19, 21-22,

5. Based on these allegations, Plaintiff asserts common law claims based in strict liability and negligence. *See, generally, id.*

6. Based on these claims, Plaintiff requests judgment in his favor, for special, general damages, and compensatory damages and for “all other relief

deemed just and proper.” *Id.*, p. 8.

DIVERSITY JURISDICTION

7. This action is properly removable under 28 U.S.C. § 1441(a) because the United States District Court has original jurisdiction of this case under 28 U.S.C. § 1332(a), which provides, in relevant part, “The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000.00, exclusive of interest and costs, and is between – (1) citizens of different States....”

A. Citizenship of the Parties

8. There is complete diversity of citizenship between the Plaintiff and Defendants.

9. Per the allegations in the Complaint, Plaintiff is a “resident of the State of Montana, Lewis and Clark County.” *See* Ex. A, ¶ 2.

10. At the time of the filing of this Complaint and at the time of removal, Best Buy was a Virginia limited partnership business with its principal place of business in Minnesota.

11. At the time of the filing of this Complaint, Plaintiff alleged RFA Brands, LLC is a Delaware company with its principal place of business in Birmingham, Michigan. *Id.*, ¶ 6.

12. Best Buy and RFA Brands, LLC are not citizens of the State of

Montana for purposes of diversity jurisdiction and removal pursuant to 28 U.S.C. § 1332(c). Therefore, there is complete diversity between the parties.

B. Amount in Controversy

13. The amount-in-controversy requirement for diversity jurisdiction is also satisfied.

14. In the Complaint, Plaintiff seeks an unspecified and unlimited amount of compensatory, special, and general damages as well as other relief. *See Ex. A, p. 7.*

15. Defendant Best Buy has a good-faith belief that the amount in controversy in this action exceeds \$75,000.00 based on Plaintiff's Complaint, the medical and property damage bills submitted to Best Buy's adjuster, and Plaintiff counsel's communications with Best Buy's adjuster.

16. Plaintiff's Complaint states he was given oxygen for smoke and chemical inhalation, that he sought treatment at a hospital, and that he "sustained permanent injuries, including but not limited to physical injuries and mental and emotional distress." *Id.*, ¶¶ 21-22. Plaintiff's Complaint also states Plaintiff "had extensive property damage of his house." *Id.*, ¶ 22.

17. To date, Plaintiff has submitted medical bills totaling \$15,733.87. Plaintiff has submitted property damage estimates in the amount of \$6297.31. Plaintiff's counsel has indicated to a Sedgwick Claims Management Services,

Inc. adjuster that Plaintiff is still treating for the alleged injuries and may require surgery. Ex. E, Decl. Alan Berg (Sept. 8, 2022).

18. Upon information and belief, Plaintiff may also request lost wages.

19. Based on all available evidence at this time, Defendant, in good faith, believes the amount in controversy requirement is satisfied pursuant to 28 U.S.C. § 1332.

ADOPTION AND RESERVATION OF DEFENSES

20. Nothing in this notice of removal shall be interpreted as a waiver or relinquishment of any of Best Buy's rights to assert any defense or affirmative matter, including, but not limited to, the defenses of: (1) lack of jurisdiction over the person; (2) improper venue; (3) insufficiency of process; (4) insufficiency of service of process; (5) improper joinder of claims and/or parties; (6) failure to state a claim; (7) the mandatory arbitrability of some or all of the claims; (8) failure to join indispensable parties; or (9) any other pertinent defense available under F.R.Civ.P. 12, any state or federal statute, or otherwise.

PROCEDURAL REQUIREMENTS

21. This case is a civil action within the meaning of 28 U.S.C. § 1441(a), relating to the removal of cases.

22. True and correct copies of "all process, pleadings, and orders" filed to date are attached hereto as Exhibit B, in conformity with 28 U.S.C. § 1446(a).

There has been no other process, pleading, or order served upon Best Buy to date in this case.

23. Best Buy first received a Summons and Complaint on August 9, 2022 attached as Exhibit C.

24. This Notice of Removal is filed within 30 days of service of the Summons and Complaint. *See* 28 U.S.C. § 1446(b).

25. This Notice of Removal is filed with this Court within 30 days after the case became removable.

26. No other pleadings or orders have been filed as of the date Best Buy filed this Notice of Removal.

27. Defendant RFA Brands, LLC, consents to removal, as evidenced the written letter of consent attached as Exhibit D.

28. Written notice of this filing has been given to Plaintiff, Defendant RFA Brands, LLC, and the Montana First Judicial District Court as provided by law and L.R. 3.3(a).

29. Best Buy reserves the right to supplement this Notice of Removal by adding any jurisdictional defenses which may independently support a basis for removal.

30. To the extent remand is sought by Plaintiff or otherwise visited by this Court, Best Buy requests the opportunity to brief the issues and submit

additional arguments and evidence and to be heard at oral argument.

PRAYER FOR RELIEF

Wherefore, Defendant Best Buy requests that the above-entitled action be removed from Montana's First Judicial District Court, Lewis and Clark County to the United States District Court, District of Montana, Helena Division.

DATED this 8th day of September, 2022.

/s/ Jill Gerdrum

Jill Gerdrum

Hall & Evans, LLC

*Attorneys for Defendant Best Buy Stores,
L.P.*

CERTIFICATE OF SERVICE

I hereby certify that on September 8, 2022, a copy of the **NOTICE OF REMOVAL** was served upon counsel of record by the following method(s):

_____	CM/ECF
_____	Hand Delivery
<u>1-2</u>	U.S. Mail, First Class
_____	Overnight Delivery Service
_____	Fax
_____	E-Mail

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/s/ Jill Gerdrum